

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2367

Introduced by Assembly Member Cooley

February 18, 2016

An act to add and repeal Section 23583 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2367, as amended, Cooley. Driving under the influence: 24/7 Sobriety program.

Existing law prohibits a person who has 0.08% or more, by weight, of alcohol in his or her blood from driving a vehicle. Existing law also prohibits a person, while having 0.08% or more, by weight, of alcohol in his or her blood from driving a vehicle and concurrently doing any act forbidden by law, or neglecting any duty imposed by law in driving the vehicle, when the act or neglect proximately causes bodily injury to a person other than the driver. A violation of either of these prohibitions is a crime. Existing law authorizes a court, in addition to imposing penalties and sanctions for those violations, to require the person to enroll and participate in, and successfully complete, a driving-under-the-influence program, which may include, among other things, education, group counseling, and individual interview sessions.

This bill would authorize the court to order a person convicted of a crime described above to enroll and participate in, and successfully complete, a qualified “24/7 Sobriety” monitoring program, as defined, ~~during probation or any other release that is subject to the jurisdiction of the county probation department, as a condition of probation,~~ if the program is available and deemed appropriate, and the person ~~has one~~

~~or more prior convictions for that crime; committed the crime within 10 years of one or more separate crimes described above that resulted in a conviction.~~ The bill would define a “24/7 Sobriety program,” in part, as requiring a person in the program to abstain from alcohol and be subject to frequent testing for alcohol. ~~The bill would authorize a court to impose sanctions for violations of the program by ordering the person to be incarcerated in the county jail for no more than 12 hours for the first violation, and no more than 24 hours for the 2nd and any subsequent violation.~~ *alcohol, as specified.* The bill would require a person participating in the program to pay the program costs, commensurate with the person’s ability to pay, as specified. The bill would require the Department of Motor Vehicles to study and report to the Legislature by January 1, 2020, on the success of the 24/7 Sobriety program in reducing the driving-under-the-influence recidivism rate in counties where it is used. These provisions would be repealed on January 1, 2021.

~~By increasing penalties in connection with a conviction for driving under the influence, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Alcohol consumption and driving under the influence impose
- 3 enormous health and safety costs on California. Problem drinkers
- 4 account for a disproportionate share of these costs. California has
- 5 had success with its current approach to driving under the influence
- 6 by lowering blood alcohol concentration limits and by focusing
- 7 on reducing the likelihood that individuals drive while intoxicated.
- 8 However, California has been less successful at targeting those
- 9 with an underlying alcohol problem that makes them more likely
- 10 to consistently drive while impaired.

(b) Those with previous convictions for driving under the influence are far more likely to recidivate than first-time offenders. Moreover, these people are disproportionately involved in alcohol-related traffic fatalities and are likely to have a diagnosis of alcohol dependence.

(c) In 2005, South Dakota started a pilot program called “24/7 Sobriety” and required those arrested for or convicted of alcohol-related offenses to take twice-a-day breathalyzer tests or wear a continuous alcohol monitoring bracelet. Those who fail or skip their tests are immediately subject to certain but modest sanctions, typically a day or two in jail. After a five-county pilot project, the program grew to include more jurisdictions and offenses. Studies have found that the total number of repeat driving-under-the-influence arrests in counties operating the program fell by 12 percent, and the total number of arrests for domestic violence dropped by 9 percent.

SEC. 2. Section 23583 is added to the Vehicle Code, to read:

23583. (a) (1) In order to strengthen the ~~pretrial and posttrial~~ options available to prosecutors and judges, the court may order a person convicted of a violation of Section 23152 or 23153 to enroll and participate in, and successfully complete, a qualified “24/7 Sobriety” monitoring program as a condition of ~~probation or other release that is subject to the jurisdiction of the county probation department,~~ *probation*, if the program is available and deemed appropriate, and the person ~~has one or more prior convictions for a violation of Section 23152 or 23153.~~ *committed the current violation within 10 years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction.*

(2) For purposes of this section, a “24/7 Sobriety program” requires a person in the program to abstain from alcohol and requires the person to be subject to frequent testing *for alcohol*, with certain but modest punishment ~~for violations.~~ *violations of the program.* The program shall be evidence-based and approved by the department. Persons ordered into the program may also be required to participate in other driving-under-the-influence programs as provided by other law. The program shall be licensed pursuant to Section 11836 of the Health and Safety Code.

(3) For purposes of this ~~paragraph,~~ *subdivision*, the term “evidence-based program” means a program that satisfies the requirements of at least two of the following:

1 (A) The program is included in the federal registry of
2 evidence-based programs and practices.

3 (B) The program has been reported in a peer-reviewed journal
4 as having positive effects on the primary targeted outcome.

5 (C) The program has been documented as effective by informed
6 experts and other sources.

7 (b) As the court deems appropriate, the program may monitor
8 alcohol through one or more of the following modalities:

9 (1) Breath testing, twice a day.

10 (2) Continuous transdermal alcohol monitoring in cases of
11 hardship.

12 (3) Random blood, breath, urine, or oral fluid testing.

13 (c) Testing locations that provide the best ability to sanction a
14 violation as close in time as reasonably feasible to the occurrence
15 of the violation should be given preference.

16 (d) In order to enable all required defendants to participate, each
17 person shall pay the program costs commensurate with the person's
18 ability to pay as determined pursuant to Section 11837.4 of the
19 Health and Safety Code.

20 (e) The court, in establishing reporting requirements, shall
21 consult with the county probation department.

22 ~~(f) The court shall advise the person at the time of sentencing~~
23 ~~that the driving privilege may not be restored until the person~~
24 ~~provides proof satisfactory to the department of successful~~
25 ~~completion of the program.~~

26 ~~(g) A violation of the program requirements may be punished~~
27 ~~by the court ordering the person to be incarcerated in the county~~
28 ~~jail for no more than 12 hours for the first violation, and no more~~
29 ~~than 24 hours for the second and any subsequent violation.~~

30 ~~(h)~~

31 (f) The department shall study and report to the Legislature by
32 January 1, 2020, on the success of the 24/7 Sobriety program
33 authorized pursuant to this section in reducing the
34 driving-under-the-influence recidivism rate in counties where it
35 is used. The report shall be submitted pursuant to Section 9795 of
36 the Government Code.

37 ~~(i)~~

38 (g) This section shall remain in effect only until January 1, 2021,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2021, deletes or extends that date.

1 ~~SEC. 3.— No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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